IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-213-2018 (O&M)

Date of Decision: 1.4.2019

The Principal Commissioner of Income Tax (Central), Ludhiana

....Appellant.

Versus

M/s Cosmos Infra Engineering (India) Ltd., Delhi

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Rajesh Katoch, Sr. Standing Counsel with
Ms. Pridhi Jaswinder Sandhu, Junior Standing Counsel.

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AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 31.10.2017 (Annexure A-III) passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 486/CHD/2017, for the assessment year 2013-14, claiming the following substantial questions of law:-

(i) Whether in the facts and circumstances of the case, the Hon'ble ITAT is correct in upholding the order of the CIT(A) that no disallowance u/s 14A can be made if there is no tax free income earned during

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the year ignoring the CBDT's Circular No. 5/2014 dated February 11, 2014 which states that disallowance of expenses for earning exempt income u/s 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962, would be attracted even if corresponding income has not been earned during the year?

(ii) Whether the impugned order dated 31.10.2017 passed by the ITAT is sustainable in the eyes of law or maintainable in the facts and circumstances of the case?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The Assessing Officer during the course of assessment proceedings had noticed that the assessee had declared investment in shares amounting to ₹ 641.13 lakhs as against such investment of ₹ 640.98 lakhs shown in the immediate preceding assessment year. Since the income earned, if any, from these investments, by way of dividend etc. was exempt from taxation, as such the expenditure incurred relating to such investments was not an allowable expenditure. The Assessing Officer vide assessment order dated 5.6.2015 (Annexure A-1) passed under Section 143(3) of the Act disallowed the expenditure amounting to ₹ 2,07,14,800/- and added to the income of the assessee. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"] challenging the addition of ₹ 2,07,14,800/- under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (in short "the Rules"). The CIT(A) vide order

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dated 6.1.2017 (Annexure A-II) allowed the appeal and deleted the addition of ₹ 2,07,14,800/- under Section 14A of the Act read with Rule 8D of the Rules. The revenue challenged the order, Annexure A-II, before the Tribunal. The Tribunal vide order dated 31.10.2017 (Annexure A-III) upheld the order of the CIT(A) and dismissed the appeal of the revenue. Hence, the present appeal by the revenue.

3. We have heard learned counsel for the revenue.

4. It could not be disputed by the learned counsel for the revenue that the aforesaid matter is covered by the judgment of this Court in **ITA-322-2016 (Principal Commissioner of Income Tax-I, Chandigarh v. M/s Vardhman Chemtech Private Limited, Chandigarh)** decided on 28.8.2018, wherein the appeal filed by the revenue against the deletion of disallowance of ₹ 40,28,526/- under Section 14A of the Act read with Rule 8D of the Rules, was dismissed.

5. Accordingly, the present appeal is also dismissed in terms of ITA-322-2016.

(AJAY KUMAR MITTAL)
JUDGE

April 1, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**

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